

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

ROBERT C. McKUSICK,

No. 99-13323

Debtor(s).

COUNTY OF SONOMA,

Plaintiff(s),

v.

A.P. No. 05-1069

ROBERT C. McKUSICK,

Defendant(s).

Memorandum re Prepetition Debt

The parties have submitted this case to the court on stipulated facts. These facts are insufficient for the court to make a determination of dischargeability pursuant to § 523(a)(3) of the Bankruptcy Code as interpreted by *In re Beezley*, 994 F.2d 1433 (9<sup>th</sup> Cir. 1993). However, they are sufficient for the court to resolve the central issue of the case, which is whether the debt in question is considered a prepetition or postpetition debt.

Debtor Robert McKusick is a former Sonoma County Sheriff's Deputy. He became disabled in

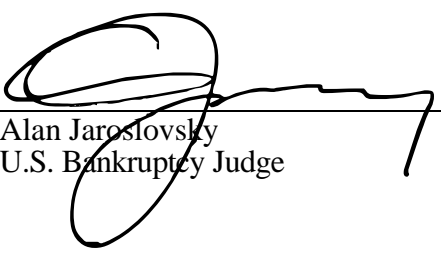
1 1998 and began receiving long term disability payments under a plan which required him to reimburse  
2 the county if he was granted disability retirement benefits for the same period. McKusick filed his  
3 Chapter 7 bankruptcy petition on November 1, 1999. Six months later, he was awarded disability  
4 retirement benefits and received a lump-sum payment covering the period during which he received  
5 disability payments.

6 There is no doubt at all that the County's claim for reimbursement is a prepetition debt subject to  
7 the bankruptcy discharge unless excepted by § 523(a)(3). Section 101(12) of the Code defines "debt"  
8 liability on a claim; § 101(5) defines "claim" as any right to payment, whether or not contingent or  
9 unmatured. The terms of the long term disability plan create a contingent debt: if retirement benefits are  
10 granted for the same period, the benefits must be repaid. It is irrelevant that the event which made the  
11 debt actual rather than contingent happened postpetition. As McKusick correctly points out, all legal  
12 obligations, no matter how remote or contingent, are subject to the bankruptcy discharge. *In re Jensen*,  
13 995 F.2d 925 (9<sup>th</sup> Cir. 1993).

14 The stipulated facts are silent as to the source of the retirement funds, so the court cannot  
15 determine if there is any right to a setoff; the court makes no ruling on this issue as well as those noted in  
16 the first paragraph above. However, in further proceedings it shall be without controversy that the debt  
17 in question is prepetition.

18 Counsel for both parties shall appear for a scheduling conference on November 28, 2005, at 2:00  
19 P.M. Appearance is mandatory and may not be waived by stipulation, although the parties may stipulate  
20 to a continuance.

21 Dated: October 25, 2005

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Alan Jaroslovsky  
U.S. Bankruptcy Judge